

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OTIS THOMAS,

Plaintiff,

v.

IMAM ABDUL MALIK SAAFIR, et
al.,

Defendants.

No. C 06-0184 MMC (PR)

**ORDER OF SERVICE; DIRECTING
DEFENDANTS TO FILE
DISPOSITIVE MOTION OR NOTICE
REGARDING SUCH MOTION**

Plaintiff, a California prisoner currently incarcerated at Salinas Valley State Prison (“SVSP”) and proceeding pro se, filed the above-titled civil rights action under 42 U.S.C. § 1983 against Imam Abdul Malik Saafir (“Saafir”), Sergeant M. J. Kircher (“Kircher”), and Captain G. Ponder (“Ponder”), all SVSP officials. He alleges the three defendants denied him “Jumah” religious services, which are mandated by his Muslim faith, between November 19, 2004 and December 3, 2004.

By separate order filed concurrently herewith, plaintiff has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may

be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

B. Legal Claims

The First Amendment right to the free exercise of religion is violated where a defendant burdens the practice of a prisoner's religion by preventing him from engaging in conduct mandated by his faith, without any justification reasonably related to legitimate penological interests. See Freeman v. Arpaio, 125 F.3d 732, 736 (9th Cir. 1997). To reach the level of a constitutional violation, "the interference with one's practice of religion 'must be more than an inconvenience; the burden must be substantial and an interference with a tenet or belief that is central to religious doctrine.'" Id. at 737 (quoting Graham v. C.I.R., 822 F.2d 844, 851 (9th Cir. 1987)). A prisoner may be inconvenienced in the practice of his or her faith so long as the governmental conduct does not prohibit the prisoner from "participating in the mandates of his religion." See id. The mandates of a religion are not merely what is minimally required of adherents of a religion but include that which "the individual human being perceives to be the requirement of the transhuman Spirit to whom he or she gives allegiance." Peterson v. Minidoka County School Dist., 118 F.3d 1351, 1357 (9th Cir. 1997). A prison regulation that impinges on an inmate's First Amendment rights is valid if it is reasonably related to legitimate penological interests. See O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987).

Plaintiff's allegation that defendants barred him from participating in Jumah services states a cognizable claim for the violation of his First Amendment rights. See Mayweathers v. Newland, 258 F.3d 930, 937-38 (9th Cir. 2001) (finding policy of disciplining inmates for missing work assignment to attend Jumu'ah (Sabbath) services interfered with conduct

mandated by Muslim faith and was not reasonably related to legitimate penological interests).

Defendants' alleged conduct may also constitute a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1, provides: "No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 [which institutions include state prisons, state psychiatric hospitals, and local jails], even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a). The statute applies to any "program or activity that receives Federal financial assistance." 42 U.S.C. § 2000cc-1(b)(1). Enactment of the RLUIPA was a legitimate exercise of Congress's spending power, and the statute does not run afoul of the First Amendment Establishment Clause, the Tenth Amendment, or the principle of separation of powers. Mayweathers v. Newland, 314 F.3d 1062, 1068-70 (9th Cir. 2002); but see Resnick v. Adams, 348 F.3d 763, 768 n.6 (9th Cir. 2003) (expressing "grave constitutional doubts" about applying RLUIPA standards to "bare constitutional claims") (dicta).

CONCLUSION

1. The Clerk of the Court shall issue summons and the United States Marshall shall serve, without prepayment of fees, a copy of the complaint in this matter, all attachments thereto, and a copy of this order upon **Imam Abdul Malik Saafir, Sergeant M. J. Kircher, and Captain G. Ponder at Salinas Valley State Prison**. The Clerk shall also mail a courtesy copy of this order to plaintiff and the California Attorney General's Office.

2. In order to expedite the resolution of this case, the Court orders as follows:

a. No later than **sixty (60) days** from the date of this order, defendants shall file a motion for summary judgment or other dispositive motion. The motion shall be supported by adequate factual documentation and shall conform in all respects to Federal Rule of Civil Procedure 56.

Defendants are advised that summary judgment cannot be granted, nor qualified

immunity found, if material facts are in dispute. If any defendant is of the opinion that this case cannot be resolved by summary judgment, he shall so inform the Court prior to the date the summary judgment motion is due.

All papers filed with the Court shall be promptly served on plaintiff.

b. Plaintiff's opposition to the dispositive motion shall be filed with the Court and served on defendants no later than **thirty (30) days** from the date defendants' motion is filed. The Ninth Circuit has held that the following notice should be given to plaintiffs:

The defendants have made a motion for summary judgment by which they seek to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendants' declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted in favor of defendants, your case will be dismissed and there will be no trial.

See Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc).

Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary judgment must come forward with evidence showing triable issues of material fact on every essential element of his claim). Plaintiff is cautioned that failure to file an opposition to defendants' motion for summary judgment may be deemed to be a consent by plaintiff to the granting of the motion, and granting of judgment against plaintiff without a trial. See Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18 F.3d 651, 653 (9th Cir.

1 1994).

2 c. Defendants shall file a reply brief no later than **fifteen (15) days** after
3 plaintiff's opposition is filed.

4 d. The motion shall be deemed submitted as of the date the reply brief is
5 due. No hearing will be held on the motion unless the Court so orders at a later date.

6 2. All communications by the plaintiff with the Court must be served on
7 defendants, or defendants' counsel once counsel has been designated, by mailing a true copy
8 of the document to defendants or defendants' counsel.


9 3. Discovery may be taken in accordance with the Federal Rules of Civil
10 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local
11 Rule 16-1 is required before the parties may conduct discovery.

12 4. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the
13 Court informed of any change of address and must comply with the court's orders in a timely
14 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
15 pursuant to Federal Rule of Civil Procedure 41(b).

16 5. Extensions of time are not favored, though reasonable extensions will be
17 granted. However, the party making the motion for an extension of time is not relieved from
18 his or her duty to comply with the deadlines set by the Court merely by having made a
19 motion for an extension of time. The party making the motion must still meet the deadlines
20 set by the Court until an order addressing the motion for an extension of time is received.
21 Any motion for an extension of time must be filed no later than the deadline sought to be
22 extended.

23 IT IS SO ORDERED.

24 DATED: May 11, 2006

25 
26 MAXINE M. CHESNEY
27 United States District Judge
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